



Comptroller General
of the United States

Washington, D.C. 20548

Scott Riback

Decision

Matter of: Aurora Technology Corporation

File: B-241498.2

Date: December 5, 1991

Lawrence M. Ross, Esq., Hurwitz & Fine, for the protester.
Patrick J. Martell, Esq., Pettit & Martin, for Rix
Industries, an interested party.

Marsha C. Peterson, Esq., Department of the Navy, for the
agency.

Scott H. Riback, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest of award of a contract is dismissed as untimely
where not filed within 10 working days of when protester
became aware of agency's award decision.

DECISION

Aurora Technology Corporation protests the award of a contract to Rix Industries under request for proposals (RFP) No. N00228-90-R-2132, issued by the Department of the Navy to acquire a quantity of single-screw, low-pressure air compressors. Aurora argues that the agency has improperly implemented an earlier recommendation by our Office in a decision concerning this acquisition.

We dismiss the protest.

In Rix Industries, Inc., B-241498, Feb. 13, 1991, 91-1 CPD ¶ 165, we sustained a bid protest filed by Rix in which the firm alleged that the Navy had improperly awarded a contract to Aurora. We determined that the award was improper because, instead of obtaining a license from another firm that would have offered Aurora access to certain necessary data, Aurora proposed an alternate technology not permitted by the terms of the solicitation. We recommended that the agency either (1) provide all competitive range offerors an opportunity to propose a similar alternate technology; or (2) terminate Aurora's contract for the convenience of the government and make award to the firm properly in line for award if the agency determined that alternate technology was not acceptable.

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In response to our recommendation, the Navy determined that the alternate technology would not meet its requirements. Consequently, on September 24, 1991, the agency terminated Aurora's contract and made award to Rix. By letter dated September 24, and received by Aurora on September 30, the Navy provided Aurora with written notice that its contract had been terminated. Aurora challenges the agency's determination that its alternate technology is not acceptable.

Under our Bid Protest Regulations, to be deemed timely protests such as the one here must be filed no later than 10 working days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2) (1991). We find that Aurora's protest was untimely under this rule based on our conclusion that the record shows Aurora was informed of the intended award to Rix no later than October 2, which is more than 10 working days before the protest was filed.

Specifically, the record shows that, on October 2, counsel for the protester telephoned the Navy's regional counsel regarding the agency's actions. The parties dispute the contents of this telephone conversation. The agency maintains that it informed Aurora's counsel of the award to Rix at this time, while the protester asserts that no mention of the award was made.¹ While Aurora's counsel has submitted an affidavit in which he attests to not having been informed of the award to Rix during the October 2 telephone conversation, the record contains an October 3 letter from the protester's counsel to the agency that states "we now understand that the Navy intends to issue the contract to Rix Industries." The letter goes on to request information relating to the Navy's decision not to accept alternate technology.

We think the October 3 letter, written immediately after the conversation, at a time when the timeliness of the protest was not at issue, clearly demonstrates that Aurora's attorney was aware of the identity of the awardee and its basis of protest on that date, notwithstanding the attorney's

¹The cognizant Navy contract specialist also telephoned Aurora's president on September 25 and notified him that the firm's contract had been terminated. The parties also dispute the substance of this conversation. The agency maintains that it also notified Aurora's president of its award to Rix. Aurora contends that the contract specialist stated that it "might" award the contract to the second lowest bidder.

representations to the contrary in his affidavit.² Consequently, Rix was required to file its protest in our Office no later than October 18, that is, 10 working days after it became aware of its basis of protest. 4 C.F.R. § 21.2(a)(2) (1991). Since Aurora's protest was not filed in our Office until October 21, it is untimely and we will not consider it.³

The protest is dismissed.



John M. Melody
Assistant General Counsel

²On October 4, the protester received a letter dated September 30 informing it in writing that award had been made to Rix. On October 11, Aurora's attorney received materials responsive to his October 3 letter and, on October 21, Aurora's protest was filed in our Office. The protester maintains that it was only when it received the September 30 letter that it became aware of its basis of protest.

³Aurora maintains that the October 3 letter constituted an agency-level protest. We disagree. The letter does not articulate any dissatisfaction with the agency's award decision, state a basis of protest or request relief. HUB Cities, Inc.--Recon., B-242517.2, Mar. 6, 1991, 91-1 CPD ¶ 254.